

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

BEYOND SYSTEMS, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. 8:08-cv-00921 (PJM) (CBD)
)	
WORLD AVENUE USA, LLC, <i>et al.</i>)	
)	
Defendants.)	
)	

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

The United States District Court for the District of Maryland presents its compliments to the British Columbia Court of Appeal and requests international judicial assistance to obtain evidence to be used in a civil matter proceeding before this court in the above captioned matter, *Beyond Systems, Inc. v. World Avenue USA, LLC, et al.*, Case No. 8:08-cv-00921 (PJM) (CBD) (D. Md.). An advisory trial on three limited issues has been set on this matter for August of 2011. A true and correct cop of the Court Order DE #544 is attached hereto as Exhibit 1. Specifically, a four-day trial on these three issues will be held, with an advisory jury, in the summer of 2011, with a specific trial date to be determined by the Court in due course, on the following three issues: (1) whether Plaintiff Beyond Systems, Inc. is a *bona fide* "interactive computer service provider" entitled to bring suit under the Maryland Commercial Electronic Mail Act ("MD-CEMA"), Md. Code. Ann., Com. Law § 14-3001 *et seq.*, and/or the Florida Commercial Electronic Mail Act ("FL-CEMA"), Fla. Stat. § 668.601 *et seq.*; (2) whether

Plaintiff Beyond Systems, Inc. is a *bona fide* resident of the state of Maryland within the meaning of the MD-CEMA statute; and (3) the nature of the relationship between Plaintiff Beyond Systems, Inc. and Third-Party Defendant Hypertouch, Inc.

This Court requests the assistance described herein as necessary in the interests of justice. The undersigned applicant has the honor to submit the following request:

(a) the authority requesting its execution:

Judge Peter J. Messitte
United States District Court for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770
United States of America

and the authority requested to execute:

British Columbia Court of Appeal
The Law Courts
400-800 Hornby Street
Vancouver, BC
V6Z 2C5
Telephone: 604-660.2729
Fax: 604-660.1951

b) the names and addresses of the parties to the proceedings and their representatives, if any:

Plaintiff

Beyond Systems, Inc. represented by **Stephen Howard Ring**
Stephen H Ring PC
506 Main St Ste 215
Gaithersburg, MD 20878
13015639249
Fax: 13015639639
Email: shr@ringlaw.us

Michael Stephen Rothman

Law Office of Michael S Rothman
401 E Jefferson St Ste 201
Rockville, MD 20850
13012519660
Fax: 13012519610
Email: mike@mikerothman.com

V.

Defendant

World Avenue USA, LLC represented by **Sanford M Saunders , Jr**
Successor by Merger to
NIUTECH, LLC.
doing business as
The Useful

Greenberg Traurig LLP
2101 L St NW Ste 1000
Washington, DC 20037
12023313130
Fax: 12023313101
Email: saundersS@gtlaw.com

John L McManus

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401 E Las Olas Blvd Ste 2000
Fort Lauderdale, FL 33301
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PRO HAC VICE

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Greenberg Traurig LLP
2101 L Str NW Ste 1000
Washington, DC 20037
12025308536
Fax: 12023313101
Email: burlacun@gtlaw.com
PRO HAC VICE

Defendant

**World Avenue
Management, Inc.**

TERMINATED:

06/19/2008

formerly known as

NIUTECH, INC.

TERMINATED:

06/19/2008

Defendant

Niuniu Ji

Defendant

John Does 1-20

Defendant

World Avenue Holdings represented by **Sanford M Saunders , Jr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John L McManus
(See above for address)
ATTORNEY TO BE NOTICED

Nicoleta Burlacu
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

The Useful, LLC

Defendant

**World Avenue
Management, Inc.**

Defendant

World Avenue IP, LLC

Defendant

Niuniu Ji
doing business as
Jinius Corporation

Defendant

**Intrepid Investments,
LLC**

Defendant

Q Interactive, Inc.

Defendant

Vente, Inc.

Defendant

Bristol Interactive, LLC
doing business as
Kitara Media

V.

ThirdParty Plaintiff

World Avenue USA, LLC represented by **Sanford M Saunders , Jr**
Successor by Merger to (See above for address)
NIUTECH, LLC. **LEAD ATTORNEY**
ATTORNEY TO BE NOTICED

John L McManus
(See above for address)
ATTORNEY TO BE NOTICED

Kenneth A Horky
(See above for address)
ATTORNEY TO BE NOTICED

Nicoleta Burlacu
(See above for address)

ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

Hypertouch, Inc.

represented by **Stephen Howard Ring**
(See above for address)
LEAD ATTORNEY

Michael Stephen Rothman
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Defendant

James Joseph Wagner

represented by **Stephen Howard Ring**
(See above for address)
LEAD ATTORNEY

Michael Stephen Rothman
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Hypertouch, Inc.

represented by **Michael Stephen Rothman**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

World Avenue USA, LLC
Successor by Merger to
NIUTECH, LLC.

represented by **Sanford M Saunders , Jr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John L McManus
(See above for address)
ATTORNEY TO BE NOTICED

Kenneth A Horky
(See above for address)
ATTORNEY TO BE NOTICED

Nicoleta Burlacu

(See above for address)

ATTORNEY TO BE NOTICED

Counter Claimant

James Joseph Wagner

represented by **Michael Stephen Rothman**

(See above for address)

ATTORNEY TO BE NOTICED

V.

Counter Defendant

World Avenue USA, LLC represented by **Sanford M Saunders , Jr**

Successor by Merger to

NIUTECH, LLC.

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

John L McManus

(See above for address)

ATTORNEY TO BE NOTICED

Kenneth A Horky

(See above for address)

ATTORNEY TO BE NOTICED

Nicoleta Burlacu

(See above for address)

ATTORNEY TO BE NOTICED

c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto:

Plaintiff alleges that WAUSA violated the Maryland Commercial Electronic Mail Act §14-3001 *et seq.* ("MD-CEMA") or the Florida Commercial Electronic Mail Act, §668.601 *et seq.* ("FEMCA"). According to the Plaintiff it is a Maryland corporation which maintains its servers in Maryland and constitutes an interactive computer service provider under MD-CEMA and an internet service provider under FEMCA, providing computer services and Internet access to multiple users. Here, BSI alleges that

Defendants initiated, conspired in the initiation, or assisted in the transmission of 70,000 unsolicited commercial e-mails to its server in Maryland since April 14, 2004, and that the commercial electronic mail messages contained false or misleading information in their subject lines, and/or false information as to their origin and or transmission paths, that had the capacity, tendency or effect of deceiving the recipient. Second Amended Complaint ant paras 14, 45-49, DE # 546. Plaintiff seeks permanent injunctive relief and judgment in the amount of \$ 72,000,000 calculated at \$500 per email received as a recipient and \$1,000 per e-mail received as an ISP under MD-CEMA plus \$500 per email under FEMCA.

WAUSA's defense are, *inter alia*, that BSI is not a *bona fide* "interactive computer service provider" entitled to bring suit under the MD-CEMA, and/or the FL-CEMA, BSI is a *bona fide* resident of the state of Maryland within the meaning of the MD-CEMA statute; and Hypertouch sent the alleged unsolicited emails to BSI and both companies exist for the sole purpose of manufacturing litigations.

d) the evidence to be obtained or other judicial act to be performed:

WAUSA seeks to serve a subpoena *duces tecum* on Machiel Van der Loos.

e) the names and addresses of the persons to be produce documents pursuant to the subpoena *duces tecum*:

Machiel Van der Loos
Department of Mechanical Engineering
The University of British Columbia
2054-6250 Applied Science Lane
Vancouver, B.C. V6T 1Z4
Canada
Tel. 604-833.2781

Fax. 604-822-2403

f) the subject-matter of the subpoena *duces tecum*:

The purpose of subpoena is to request Machiel Van der Loos to produce documents relevant to the embedded email addresses in the rehabrobotics.org website whose registrar Mr. Van der Loos. A true and correct copy of the said website and WHOIS registration is attached hereto as Exhibit 2. Mr. Van der Loos should also be asked to submit an affidavit authenticating the records.

g) the documents to be produced:

1. Documents that refer or relate to Mr. Van der Loos as being the registrar of the rehabrobotics.org.
2. Documents that refer or relate to Mr. Van der Loos using Hypertouch's servers per the rehabrobotics.org. WHOIS registration paper.
3. Documents that refer or relate to the programming of, origin of, monitoring of, and purpose of the embedded email addresses in the rehabrobotics.org.
4. Documents that constitute, refer or relate to communications between Mr. Van der Loos and his agents or legal representatives and James Joseph Wagner and/or Hypertouch, and his agents or legal representatives, concerning the embedded email addresses in the rehabrobotics.org.

h) any requirement or special form to be used:

The British Columbia Court of Appeal to issue all process and documents necessary to require Mr. Van der Loos to produce all documents in his possession, custody and control identified at (g) above.

Please notify this Court and the above mentioned counsel of record when the requested production is to be made.

The Court expresses its willingness to provide similar assistance to judicial ^{*regime counsel to*} authorities of Canada and will reimburse the costs incurred in executing this rogatory letter. _{*^*}

DATE OF REQUEST

March 8, 2011 *March 15, 2011*

SIGNATURE AND SEAL
OF THE REQUESTING
AUTHORITY


The Hon. Judge Peter J. Messitte